

Mr. Speaker, it's time for America to be America again: peace loving, compassionate, and a true champion of human rights, and restore our dignity.

HADITHA, IRAQ, FIREFIGHT THE MARINES AND THE PRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, the New York Times called it the "nightmare" killings of Haditha, Iraq, and the "defining atrocity" of the Iraq War. Maureen Dowd of the New York Times referred to the incident as the "My Lai Acid Flashback." Another New York Times reporter filed 36 stories on what he called the "cold blooded killing," saying, "This is the nightmare everyone worried about when the Iraq invasion took place." Self-proclaimed expert and "worst person ever," Keith Olbermann of MSNBC, called it "willful targeted brutality." Nation Magazine said of the event in Iraq that "members of the 3rd Battalion, 1st Marine Regiment perpetrated a massacre." And even a Member of this House of Representatives said, "Our troops overreacted . . . and killed innocent civilians in cold blood."

It has become the largest investigation in the history of Naval Criminal Investigative Service, which has 65 government agents assigned to this one case. Mr. Speaker, as a former judge and prosecutor, I have never heard of 65 criminal investigators assigned to one case except the 9/11 attack.

What is the terrible atrocity these news sources are talking about?

Well, Mr. Speaker, the Haditha, Iraq, incident took place in November of 2005 when our Marines were attacked by the use of a roadside bomb that exploded, killing one Marine and wounding two others. The Marines were then engaged in a firefight. Twenty-four Iraqis were killed, including some civilians.

After the gun battle was over and the smoke cleared, our government charged four Marines with murder and four others with not properly investigating the case. In a rabid rainstorm of criticism by U.S. journalists who were looking for the scalps of these eight Marines, the eight Marines were tried by a hysterical jury of journalists in the press and apparently found guilty on all charges.

But normally, Mr. Speaker, in America we try folks in our justice system and give them a trial before we send them off to the hangman and the gallows. Be that as it may, now, 2½ years after expensive, intense, and thorough investigation, the facts as portrayed by the sensational National Enquirer-type journalists are not as they were portrayed to be.

According to columnist Michelle Malkin, who covered these cases in depth, seven of the eight Marines have had their cases dropped or dismissed. The eighth is awaiting trial in a real

court, rather than the court of yellow journalism.

These journalists, ironically, are the same ones wanting to close down Guantanamo Bay prison and are worried about the treatment of those alleged terrorists there who may get cold blueberry muffins for their breakfast. But these writers could care less about the presumption of innocence for these eight U.S. Marines, seven of which have had their cases dismissed already. Only in America does the press get teary eyed about the Gitmo detainees but is blissfully ignorant about the justice in the prosecution of our Marines.

Meanwhile, the U.S. Marines are still in the midst of battle in Iraq and Afghanistan and standing vigilant in other places of the world protecting American interests and values. Those values include the freedom of speech and the freedom of the press to say anything it wants, even when the press is totally inaccurate and unfair in the expression of those fundamental rights. And for the U.S. Marines, we say Semper Paratus.

And that's just the way it is.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

(Mr. MCDERMOTT addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

THE PROSECUTION OF FORMER U.S. BORDER PATROL AGENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina. Mr. Speaker, as the Members of the House are aware, in February of 2006, U.S. Border Patrol agents Ramos and Compean were convicted of shooting and wounding a Mexican drug smuggler who brought \$1 million worth of marijuana across our borders into Texas. The agents were sentenced to 11 and 12 years in prison and now have been in Federal prison for 523 days.

Last week I sent a letter, signed by Congressmen TED POE, DANA ROHRBACHER, VIRGIL GOODE, LOUIE GOHMERT, JOHN CULBERSON, and DON MANZULLO, to ask the U.S. Department of Justice Office of Professional Responsibility to investigate the actions of U.S. Attorney Johnny Sutton in this case.

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One of the main reasons for this request stems from the firearm charge used by his office in prosecuting the agents. This charge carried a 10-year minimum sentence. Without this charge, one of the agents, Agent Ramos, would have already completed his sentence and would be out of prison and with his family today.

The office of U.S. Attorney Johnny Sutton charged the agents with the discharge of a firearm during a crime of violence. Yet, there is no such crime. The law makes it a crime to use or carry or possess a firearm in relation to any crime of violence. The Supreme Court ruled last year in *United States vs. Watson* that discharge of a firearm is only a sentencing factor for a judge to consider at the conviction, not for the jury to determine if a crime occurred. However, you can imagine how difficult it would be to convince a jury that two Border Patrol agents, law enforcement officers, were unlawfully using, carrying, or possessing their firearms.

When you look at the history of why Congress enacted this statute, one reason stands out: To warn criminals to think twice before they stick a gun in their pocket on the way to the scene of a crime. This is the reason the statute clearly does not apply, does not apply to law enforcement officers like Ramos and Compean. These men were not carrying guns so they could commit a crime, they were required to carry guns as part of their job.

By focusing the jurors' attention on this nonexistent crime of discharging a firearm, there is reason to believe that Johnny Sutton intentionally manipulated the Federal criminal code to obtain a conviction against these two Border Patrol agents at all costs.

The American people must be confident that prosecutors will not tailor the law to make it easier to secure a conviction in a particular case. Federal prosecutors take an oath to enforce the law, not to make it.

I want the families of Ramos and Compean to know that my colleagues and I will continue to bring this injustice to the attention of the American people and to the White House.

I am most grateful, I am most grateful to Chairman JOHN CONYERS and his staff for their interest in investigating the prosecution in this case. I hope that the House Judiciary Committee will soon hold a hearing on this injustice, and I am also hopeful that the Department of Justice will take this matter seriously and will investigate Mr. Sutton's conduct in this case.

Mr. Speaker, before closing, I want the family, again, of Border Patrol Agents Ramos and Compean, that those of us in Congress on both sides of the aisle, we care about their families, we care about these Border Agents, and never, under any circumstances, should they have been indicted and prosecuted.

I want to thank Chairman JOHN CONYERS for holding hearings on this matter.

CONGRESS OF THE UNITED STATES,

Washington, DC, June 18, 2008.

Re Complaint for Prosecutorial Misconduct
Against Johnny Sutton, United States
Attorney, Western District of Texas

H. MARSHALL JARRETT,

Counsel, Office of Professional Responsibility
United States Department of Justice, Wash-
ington, DC.

DEAR COUNSEL JARRETT: As Members of Congress, we write this letter to bring to your attention for investigation what we have concluded to be a serious miscarriage of justice by United States Attorney Johnny Sutton. Mr. Sutton supervised, and has vigorously defended, his office's actions in a case wherein two United States Border Patrol agents—Ignacio Ramos and Jose Alonso Compean—have been convicted, and each are now being punished by imprisonment of 10 years, for a crime that does not exist, and therefore, for a crime that could not have been committed.

Specifically, Mr. Ramos and Mr. Compean were charged with violating 18 United States Code Section 924(c)(1)(A) by the “knowing[] discharge[] [of] a firearm . . . during and in relation to a crime of violence.” (Emphasis added). There is, however, no such crime. Rather, Section 924(c)(1)(A) makes it a crime to “use or carry . . . during and in relation to any crime of violence” or to “possess a firearm” “in furtherance of” any such crime. And, as the United States Supreme Court recently pointed out, “discharge” is only a sentencing factor to be considered by the judge after conviction, not by the jury in the effort to determine whether the law has been violated. *United States v. Watson*, 169 L.Ed.2d 472 (2007).

While this distinction might, at first glance, be merely technical, the United States Court of Appeals for the Fifth Circuit, the circuit in which Mr. Ramos and Mr. Compean were convicted, ruled that an indictment that did not allege that a defendant had so used or carried, or so possessed, a firearm was insufficient to charge an offense under Section 924(c)(1)(A). See *United States v. McGilberry*, 480 F.3d 326, 329 (5th Cir. 2007). Indeed, six years before McGilberry, the Fifth Circuit, ruled that “discharging a firearm during and in relation to a crime of violence” was not an “actus reus” element of the offense defined by 18 U.S.C. Section 924(c)(1)(A), but only a factor to be considered at “sentencing” after conviction.” See *United States v. Barton*, 257 F.3d 433, 441–43 (5th Cir. 2001). And one year after Barton (and five years before Watson), the United States Supreme Court agreed, ruling that Section 924(c)(1)(A) did not define “discharge” of a firearm as a separate offense, but only as a “sentencing factor[] to be considered by the trial judge after conviction.” See *Harris v. United States*, 536 U.S. 545, 550–53 (2002).

Notwithstanding these binding precedents in the Western District of Texas, United States Attorney Sutton secured an indictment charging Mr. Ramos and Mr. Compean with the non-existent crime of “discharging” a firearm “in relation to a crime of violence.” By this charge Mr. Sutton facilitated the conviction of the two border control agents by means of jury instructions that focused the jury’s attention upon the “discharge” of the agents’ firearms, rather than upon the lawfulness of the possession, carrying, and use of such firearms in the ordinary course of their employment. Moreover, by this indictment and these instructions, Mr. Sutton obtained a conviction of an offense that carried a minimum 10-year sentence, as provided by the statute, rather than the lesser sentence for violation of Border Patrol rules and regulations. See also,

Brief Amici Curiae of Congressman Walter B. Jones, Gun Owners Foundation, United States Border Control Foundation, United States Border Control, and Conservative Legal Defense and Education Fund, Inc., In Support of Appellants, *United States of America v. Jose Alonso Compean and Ignacio Ramos*, No. 06–51489, U.S. Court of Appeals, Fifth Circuit (May 27, 2007).

It is our firm conviction that, by these actions, Mr. Sutton is guilty of prosecutorial misconduct, the effect of which has imposed an irreversible and substantial effect upon Mr. Ramos and Mr. Compean and their families. Prior to the return of the indictment against Mr. Ramos and Mr. Compean, Mr. Sutton must have known that it was impossible for there to be probable cause for a “crime” never enacted by Congress, as authoritatively and previously decided by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. According to Rule 3.09 of the Texas Disciplinary Rules of Professional Conduct, a prosecuting attorney is to “refrain from prosecuting . . . a charge that the prosecutor knows is not supported by probable cause.”

Indeed, the Comments to Rule 3.09 of the Texas Rules of Professional Conduct admonish prosecutors to remember their “responsibility to see that justice is done, and not simply be an advocate.”

On April 1, 1940, then Attorney General Robert Jackson, speaking to United States Attorneys serving in each federal judicial district across the country, reminded them why justice should be their goal, not winning their cases. “The prosecutor,” he said, “has more control over the life, liberty, and reputation than any other person in America. His discretion is tremendous . . . We must bear in mind that we are concerned solely with the prosecution of acts which the Congress has made federal offenses.”

Mr. Sutton has manipulated the federal criminal code to obtain a conviction against two U.S. Border Patrol agents, preferring to win at all costs over his duty as a United States Attorney, and his duty under the Texas Rules of Professional Conduct. This is a matter which your office has a duty to investigate and, on the basis of what we now know, to remedy.

Sincerely yours,

WALTER JONES,
TED POE,
VIRGIL GOODE,
DANA ROHRBACHER,
LOUIE GOHMERT,
JOHN CULBERSON,
DONALD A. MANZULLO,
Members of Congress.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

OPERATION STREAMLINE

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Texas (Mr. CULBERSON) is recognized for 5 minutes.

Mr. CULBERSON. Speaker CUELLAR, it's perfectly appropriate that you're in the chair today because you and I have served together in the Texas House, and we have worked together, Mr. Speaker, in cooperation with our friend, Congressman CIRO RODRIGUEZ of Del Rio. You and I and CIRO have worked together to successfully implement a program that I want to single out for praise tonight.

In the Laredo sector and the Del Rio sector, the immigration laws of this country are being enforced with a zero tolerance in a program called Operation Streamline. With the full support of the local community that you represent, Mr. Speaker, because the crime rate in Laredo has dropped 70 percent—excuse me; in Del Rio we have seen a 70 percent drop. I think you have seen about a 60 percent drop in the crime rate in the Laredo sector as a direct result of simply enforcing existing law in a team effort, Mr. Speaker, between the Border Patrol, the U.S. Marshals, the prosecutors, the judges, the magistrates, and the sheriffs, with their local Congressman, Congressman CUELLAR. You, Mr. Speaker, CIRO RODRIGUEZ, and myself on the Appropriations Committee, we have been able to bring together that team approach in a bipartisan way that has resulted in a dramatic decline in the crime rate. The illegal crossings in the Del Rio sector are now at the lowest level they have been since the Border Patrol started keeping statistics in 1973.

I bring this to the attention of the House tonight, Mr. Speaker, first of all, to congratulate and praise those fine men and women in the law enforcement community of the Border Patrol in Del Rio and Laredo, also in the Yuma sector, where this is working so well. In particular, in the Laredo and Del Rio sectors we have seen real success because of the teamwork of those law enforcement officers and the judges and the cooperation we have seen at an unprecedented level between members of both parties in making sure the community and the Nation are safe in those sectors.

I am working with you now, Mr. Speaker, as well as with the local Members of Congress in rolling out Operation Streamline, it's called, the zero tolerance program, in the Rio Grande Valley sector. So that the goal is, of course, from the mouth of the Rio Grande now, up through the Del Rio sector, Lake Amastad, that the border will be secure.

Unfortunately, Mr. Speaker, it is a very different story in Tucson, Arizona. In Tucson, Arizona, the local U.S. Attorney refuses to enforce existing law, and in Tucson, if you are arrested by the Border Patrol, for example, in Del Rio or Laredo, you have a 100 percent chance of being prosecuted and serving some time in jail, obviously